

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF ADOPTING A ) RESOLUTION NO. 85-554  
COUNCIL POSITION ON )  
SENATE BILL 662 ) Introduced by  
 ) Councilor Ernie Bonner

WHEREAS, The process of siting a sanitary landfill is characterized by lengthy time requirements, ambiguous authority and criteria; and

WHEREAS, The need for a new sanitary landfill site in the Portland metropolitan area is manifest; and

WHEREAS, The Metropolitan Service District (Metro) is responsible for operating solid waste disposal sites and has an interest, therefore, in the siting process; and

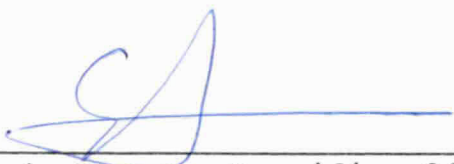
WHEREAS, Legislation modifying existing state landfill siting authority has been introduced before the Oregon Legislative Assembly as Senate Bill 662; and

WHEREAS, Senate Bill 662 embodies the spirit of those principles which the Metro Council feels must be addressed by such legislation; now, therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District supports passage of Senate Bill 662 and that this support does not preempt support of similar legislation which may be introduced at a later date.

ADOPTED by the Council of the Metropolitan Service District this 11th day of April, 1985.

  
Ernie Bonner, Presiding Officer

# Senate Bill 662

Sponsored by COMMITTEE ON GOVERNMENT OPERATIONS AND ELECTIONS (at the request of Representative Mike Burton)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Requires joint assembly of county commissioners of counties within metropolitan service district for purpose of selecting landfill disposal sites. Requires recommendation of sites to metropolitan service district no later than July 1, 1986. Requires metropolitan service district to review recommended sites. Requires metropolitan service district, if it approves site, to seek permits necessary to operate landfill on site. Authorizes Environmental Quality Commission to select site and issue necessary permits if joint assembly does not recommend site; if metropolitan service district does not approve site; or if necessary permits cannot be obtained. Specifies criteria by which Environmental Quality Commission must choose site and issue permits for operation of landfill on that site. Requires surcharge of 50 cents per ton from person depositing solid waste in landfill created under this Act after July 1, 1986. Provides that fees collected as surcharge be used to promote economic development of specified area within Multnomah County.

## A BILL FOR AN ACT

1  
2 Relating to solid waste disposal; and appropriating money.

3 Be It Enacted by the People of the State of Oregon:

4 SECTION 1. Sections 2 to 4 of this Act are added to and made a part of ORS chapter 459.

5 SECTION 2. (1) Within 60 days after the effective date of this 1985 Act, the governing bodies of all the  
6 counties located wholly or partially within a metropolitan service district shall meet in a joint assembly for the  
7 purpose of determining appropriate locations for a landfill disposal site within the boundaries of their counties.

8 (2) Not later than 30 days after the effective date of this 1985 Act, the governing body of the most populous  
9 county within the metropolitan service district shall call the joint assembly of the county governing bodies. The  
10 governing body of the most populous county shall cause notice of the joint assembly to be sent by certified mail to  
11 each member of the governing body of each county. The notice shall specify the time and place of the joint  
12 assembly.

13 (3) At the joint assembly, a majority of the members of each governing body constitutes a quorum for the  
14 transaction of business.

15 (4) The members of the county governing bodies at the joint assembly shall adopt rules for the conduct of the  
16 joint assembly and any further proceedings that may be necessary for carrying out the requirements of this  
17 section.

The joint assembly of county commissioners shall establish  
criteria for selecting preferred and appropriate sites.

18 The members of the county governing bodies shall order a study to be conducted to determine the  
19 preferred and appropriate sites for a landfill within their counties. The study shall be completed not later than  
20 July 1, 1986.

21 (5) Upon completion of the study, but not later than July 1, 1986, the members of the governing bodies of the  
22 affected counties shall jointly recommend preferred sites for a landfill to the council of the metropolitan service  
23 district. The governing bodies may also jointly recommend a preferred site for a resource recovery facility.

24 ~~(6) Notwithstanding any acknowledged comprehensive plan of a city or county, when making its  
determination on the location of a landfill disposal site, the joint assembly of county commissioners need~~

1 consider only the state-wide planning goals relating to solid waste management adopted under ORS 197.005 to  
 2 197.430 and the provisions of the solid waste management plan adopted by the metropolitan service district for  
 3 the area.

4 ~~(6)-(7)~~ A county shall be barred from contesting or seeking review of a decision by the Environmental Quality  
 5 Commission relating to selection of a landfill disposal site under section 4 of this 1985 Act if the commission is  
 6 required to select the landfill disposal site because a site is not selected and recommended by the joint assembly of  
 7 county commissioners under this section.

8 ~~(7)(8)~~ Unless the cost is apportioned differently according to an agreement among the counties, the cost of the  
 9 study required under this section shall be paid by each county in such proportion as the population of the county  
 10 bears to the total population of all the affected counties.

(8) For the purpose of Sections 2, 3 and 4 of this 1985 Act  
 "landfill" means a landfill which accepts all solid wastes as defined  
 in ORS 459.005(18).

11 SECTION 3. (1) If, upon review but not later than April 1, 1988<sup>7</sup>, the council of the metropolitan service  
 12 district approves a proposed landfill disposal site recommended by the county governing bodies under section 2  
 13 of this 1985 Act, the metropolitan service district shall apply to the local government unit with jurisdiction over  
 14 the proposed site for any license, permit or other form of approval necessary under a comprehensive plan or land  
 15 use regulations to establish or operate a landfill on that site.

16 (2) ORS 215.428 and 227.178 apply to an application made under this section. However, the metropolitan  
 17 service district shall not ask for any extension of time that allows final action on its application to be taken later  
 18 than one year after the date on which the application was first made.

(3) Judicial review of any permit, license or other approval  
 necessary to establish the landfill disposal site selected by  
 Metro, other than the land use decision defined in ORS Chapter 197,  
 may be obtained by an aggrieved person by filing a notice of intent  
 to appeal in the Court of Appeals within 30 days of the date of  
 the decision appealed. Copies of notice shall be served upon the  
 person making the decision and upon the metropolitan service  
 district. The record shall be filed with the Court of Appeals and  
 served on the metropolitan service district within 30 days of the  
 filing of the notice of intent to appeal. The Court of Appeals  
 shall issue a final order on the appeal within 120 days of the  
 filing of the record or a longer period upon a finding by the  
 court that the ends of justice served by granting a continuance  
 outweigh the best interest of the public and the parties in having  
 a decision within 120 days.

19 SECTION 4. (1) The Environmental Quality Commission shall review the sites recommended by the  
 20 county governing bodies under section 2 of this 1985 Act and any other alternative disposal sites or resource  
 21 recovery systems <sup>or</sup> facilities recommended by the metropolitan service district or Department of Environmen-  
 22 tal Quality and select a site <sup>if</sup> within the counties described in Section 2(1)

23 (a) A site is not selected and recommended by the joint assembly of county commissioners under section 2 of

24 this 1985 Act;

25 (b) The metropolitan service district did not approve <sup>A</sup> the site~~s~~ selected and recommended by the joint  
26 assembly of county commissioners; or

27 (c) The necessary permits, licenses or other forms of approval for a <sup>selected</sup> site cannot be obtained by the  
28 metropolitan service district, <sup>selected</sup> have not been issued or have been issued and are  
overturned on appeal.

29 (2) In making its determination on the location of a landfill disposal site, the Environmental Quality  
30 Commission shall consider only:

31 (a) The provisions of the solid waste management plan adopted by the metropolitan service district for the  
32 area;

33 (b) The state-wide planning goals adopted under ORS 197.005 to 197.430, <sup>except Goal 2 requiring consistency with</sup>  
<sup>adopted comprehensive plans and implementing</sup>  
<sup>ordinances.</sup> and

34 (c) Rules adopted by the Department of Environmental Quality relating to solid waste disposal.

35 (3) <sup>(a)</sup> Notwithstanding any city or county charter or ordinance, <sup>or state or local government rule</sup> the Environmental Quality Commission is  
36 authorized to issue all permits required for a landfill disposal site <sup>selected pursuant to subsection (1) of</sup>  
<sup>to the metropolitan service district</sup> within the boundaries of an affected local- <sup>this</sup>  
37 government unit if the commission finds that <sup>section</sup>

38 - (a) The action is consistent with the state-wide planning goals <sup>giving paramount consideration of Goal 11</sup> relating to solid waste management adopted  
39 under ORS 197.005 to 197.430 and the solid waste management plan adopted by the metropolitan service  
40 district; and -

41 - (b) ~~The metropolitan service district is unable to establish a landfill disposal site. --~~

1 (b) ~~(4)~~ The Environmental Quality Commission shall issue all permits necessary for the establishment and  
2 operation of a landfill disposal site within one year after the date on which it makes the findings of fact described  
3 in subsection (1) of this section.

4 (4) ~~(5)~~ Judicial review of any order of the Environmental Quality Commission under this section may be  
5 obtained by any aggrieved person by petition to the Court of Appeals in the manner provided for review of orders  
6 in contested cases.

Appeal of the order shall be filed within 30 days of the date of the order. Copies of the notice shall be served on the Environmental Quality Commission and at the metropolitan service district. The record shall be filed with the Court of Appeals and served on the metropolitan service district within 30 days of the filing of the petition. The Court shall issue its opinion within 140 days from the return of the record. The Court may take evidence on constitutional issues.

7 SECTION 5. (1) Any person using a landfill disposal site established under this Act after July 1, 1986, shall  
8 pay, in addition to other fees paid for the use of the site, a fee of 50 cents per ton of solid waste deposited in the  
9 site.

10 (2) Fees collected under this section are continuously appropriated to the Economic Development  
11 Commission for the purpose of promoting the economic development of that area in Multnomah County  
12 situated west of Interstate Highway 5 between the Willamette and Columbia Rivers.

SECTION 6. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

Jill Hinckley reported the city of Gresham and Multnomah County supported this action. No one spoke against the action and the Hearings Officer recommended approval, she said. Because there was no opposition to the case, public testimony was not received at this meeting.

The Presiding Officer announced a second reading of the Ordinance would take place April 11, 1985.

8. RESOLUTIONS

8.1 Consideration of Resolution No. 85-545, for the Purpose of Adopting a Council Position on Proposed Legislation Modifying State Landfill Siting Authority

Phillip Fell explained Resolutions No. 545 and 554 were brought to the Council at its request. Resolution No. 545 was worded to address the general principles by which landfills should be sited, and Resolution No. 85-554 specifically addressed Metro's position regarding SB 662. There was no discussion regarding Resolution No. 85-545.

Motion: Councilor Kafoury moved to adopt Resolution No. 85-545 and Councilor Waker seconded the motion.

Vote: A vote on the motion resulted in:

Ayes: Councilors DeJardin, Gardner, Kirkpatrick, Myers, Van Bergen, Waker and Bonner

Nays: Councilor Kelley

Abstent: Councilors Cooper, Hansen and Oleson

The motion carried and the Resolution was adopted.

8.2 Consideration of Resolution No. 85-554, for the Purpose of Adopting a Council Position on Senate Bill 662, Modifying State Landfill Siting Authority

Motion: Councilor Gardner moved to adopted Resolution No. 85-554 and Councilor Kelley seconded the motion.

Councilor Kafoury said she could not support the Resolution because she had not read SB 662. Councilor Kirkpatrick said she was concerned about the bill's incorrectly worded provision for a 50¢ surcharge and because she had not seen the latest draft, she was reluctant to support the Resolution.



Mr. Fell explained several changes had recently been made to the bill: 1) counties would be allowed to consider statewide goals but not local comprehensive plans in siting landfills; 2) if counties failed to recommend a landfill site, they could not later appeal an EQC site selection; and 3) the bill now read, "that area in Multnomah County situated west of Interstate Highway 5 between the Willamette and Columbia Rivers."

Withdrawal of Motion: Councilors Gardner and Kelley agreed to withdraw their motion until the Council could examine the latest draft of the bill.

Councilor Myers urged the Council to reconsider their position on SB 662 in order to assist Representative Burton in preparing his amendments. He asked for reconsideration at the April 11 Council meeting.

Mr. Fell explained staff and Counsel were preparing responses to SB 662 and many issues had not been satisfactorily addressed. He said he could bring back a Resolution for consideration on April 11 if all staff's questions were answered before that date. Presiding Officer Bonner agreed the Council would reconsider the Resolution at the April 11 meeting.

8.3 Consideration of Resolution No. 85-556, for the Purpose of Adopting a Council Position on Proposed Legislation: HB 2038, Making the Executive Officer the 13th Member of the Council; and HB 2427, Executive Officer to be Appointed by the Council

Motion: Councilor Kirkpatrick moved the Resolution be adopted and Councilor Kafoury seconded the motion.

Ray Barker noted HB 2427 had been erroneously referred to as HB 2027 in the resolution and staff report.

Presiding Officer Bonner questioned whether the Council should approve the Resolution because he did not know whether the Metropolitan Citizens League, City Club or Columbia Willamette Futures study groups were actually carrying out studies on these issues. He thought the Council should take a position independent of other studies.

Councilor Kirkpatrick said she understood the City Club and the Citizens League were still involved in studies related to the Council's structure. Don Carlson confirmed a Citizens League study was in progress. Councilor DeJardin suggested staff check with the three groups regarding actual status of their studies.

6. APPROVAL OF MINUTES

Motion: Councilor Kafoury moved the minutes of the March 14, 1985, Council meeting be approved. Councilor Waker seconded the motion.

Vote: A vote on the motion resulted in:

Ayes: Councilors Cooper, Gardner, Kirkpatrick, Kafoury, Kelley, Myers, Van Bergen, Waker and Bonner

Absent: Councilors DeJardin, Hansen and Oleson

The motion carried and the minutes were approved.

7. ORDINANCES

7.1 Consideration of Ordinance No. 85-187, for the Purpose of Adopting a Final Order and Amending the Metro Urban Growth Boundary in Contested Case No. 83-1: McCarthy and DeShirlia Properties (Second Reading)

The Clerk read the Ordinance by title only.

Motion: A motion to adopt the Ordinance was made by Councilors Kafoury and Kelley on March 28, 1985.

There was no discussion on the Ordinance.

Vote: A vote on the motion resulted in:

Ayes: Councilors Cooper, Gardner, Kirkpatrick, Kafoury, Kelley, Myers, Van Bergen, Waker and Bonner

Absent: Councilors DeJardin, Hansen and Oleson

The motion carried and the Ordinance was adopted.

8. RESOLUTIONS

8.1 Consideration of Resolution No. 85-554, for the Purpose of Adopting a Council Position on Senate Bill 662, Modifying State Landfill Siting Authority

Phillip Fell circulated the latest, amended version of SB 662 to Councilors and reviewed each proposed amendment. It was staff's opinion the proposed amendments would make the legislation clearer and more workable, he said.

Councilor Kirkpatrick asked why Resolution No. 85-554 did not address the proposed amendments to the Senate Bill. Mr. Fell explained the Resolution was worded in general terms to allow staff to negotiate with Legislators regarding future amendments. The Executive Officer supported this position.

Councilor Myers suggested the Council adopt the Resolution and proposed a second motion be made authorizing staff to continue negotiation with Legislators in the spirit of Resolution No. 85-554. Councilor Hansen agreed with this position.

Councilor Van Bergen said he did not support the Resolution but would feel free to speak as an individual before the Legislative Session if necessary.

Motion: Councilor Myers moved Resolution No. 85-554 be adopted and Councilor Kafoury seconded the motion.

Vote: A vote on the motion resulted in:

Ayes: Councilors Cooper, Gardner, Hansen, Kirkpatrick, Kafoury, Kelley, Myers, Oleson, Waker and Bonner

Nay: Councilor Van Bergen

Absent: Councilor DeJardin

The motion carried and the Resolution was adopted.

The Presiding Officer encouraged questions from Councilors regarding specific provisions of SB 662.

Councilor Gardner asked if staff had any indication Section 5 of the proposed legislation would be amended. Mr. Fell reported Representative Burton had testified at a Senate committee hearing he intended to present an amendment to Section 5 on April 22 to limit the legislation to encompass the St. Johns Landfill area.

Councilor Waker said it was his understanding the Council would not take a position on Section 5. The Presiding Officer affirmed this assumption.

Motion: Councilor Myers moved the Council authorize the Executive Officer and staff to use the most suitable approach, including meeting with Representative Burton, to advance to the Senate committee the proposed amendments to SB 662 discussed at this meeting and any future amendments deemed appropriate in the spirit of provisions outlined in Resolution No. 554. Councilor Kafoury seconded the motion.



Councilor Myers said he expected the Executive Officer and staff would consult with Councilors regarding the progress of proposed amendments to assure the amendments were in agreement with the principles of Resolution No. 85-554.

In response to Councilor Gardner's question, Mr. Fell said he thought the intent of Section 5 was to collect revenue on solid waste deposited at the St. Johns Landfill after July 1, 1986.

Vote: A vote on the motion resulted in:

Ayes: Councilors Cooper, Gardner, Hansen, Kirkpatrick, Kafoury, Kelley, Myers, Oleson, Waker and Bonner

Nay: Councilor Van Bergen

Absent: Councilor DeJardin

The motion carried.

9. OTHER BUSINESS

9.1 Consideration of Awarding the West Bear Grotto Remodel and Related Areas Construction Contract to Bishop Contractors, Inc.

Motion: Councilor Hansen moved the contract be approved and Councilor Kafoury seconded the motion.

Kay Rich noted Keith Larson, project architect, was a member of the Contract Selection Committee, a fact omitted from the staff report for this agenda item.

Mr. Rich then reviewed the process for recommending the contract award to Bishop Contractors, Inc., as described in the staff report. He explained the Selection Committee, after careful consideration, selected three firms with which to conduct final bid negotiations. One of these firms dropped out of the process after submitting the initial lump sum bid, he reported, but were complimentary regarding the negotiated bid process. The Selection Committee recommended awarding the contract to Bishop Contractors, Inc. because they submitted the lowest bid which included the lump sum bid less the sum of acceptable cost savings proposals. He also said Bishop proposed 12 percent Disadvantaged Business Enterprise participation.

Mr. Rich explained representatives from the Associated General Contractors (AGC) had contacted staff requesting a meeting to discuss concerns with some aspects of the negotiated bid process.